

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1297 Insurance Payments from Escrow Accounts
SPONSOR(S): Ritter
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 2196

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)	10 Y, 0 N	Cheek	Cooper
2) Insurance			
3)			
4)			
5)			

SUMMARY ANALYSIS

Section 501.137, F.S., provides that every lender of money whose loans are secured by a mortgage on real estate located in Florida and who receives funds held in escrow for the payment of property taxes or hazard insurance premiums, must promptly pay the taxes or insurance premiums when due, so that the maximum tax discount is obtained and the insurance coverage does not lapse. If the lender, as a result of neglect, fails to pay any tax or insurance premium when due and sufficient escrow funds are on deposit, the lender is liable *if the property owner suffers a loss as a result of such failure*. The statute does not define or otherwise describe the type of loss for which a lender would be liable, and staff research finds no case law interpreting its meaning.

The bill adds requirements to the current law that makes a lender of money secured by a mortgage liable to the property owner for a loss that results from the failure of the lender to timely pay any insurance premium from escrowed funds. The bill provides that if the premium payment is not more than 90 days overdue, the insurer must reinstate the insurance policy, retroactive to the date of cancellation, and the lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner for reinstating the policy. If the premium payment is more than 90 days overdue or if the insurer refuses to reinstate the insurance policy, the lender must pay the difference between the cost of the previous policy and a new, comparable policy, for a period of 2 years.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

Section 501.137, F.S., provides that every lender of money whose loans are secured by a mortgage on real estate located in Florida and who receives funds held in escrow for the payment of property taxes or hazard insurance premiums, must promptly pay the taxes or insurance premiums when due, so that the maximum tax discount is obtained and the insurance coverage does not lapse. If the lender, as a result of neglect, fails to pay any tax or insurance premium when due and sufficient escrow funds are on deposit, the lender is liable *if the property owner suffers a loss as a result of such failure*. The statute does not define or otherwise describe the type of loss for which a lender would be liable and staff research finds no case law interpreting its meaning.

Insurers must give the named insured at least 10 days’ written notice of cancellation of a property insurance policy when cancellation is for nonpayment of premium. However, there is no statutory requirement for an insurance company to reinstate an insurance policy that has been canceled for nonpayment of premium, whether due to the mortgage lender’s failure to pay the premium when due or any other reason.

The statute cited above requiring lenders to be liable for failure to timely pay premiums or taxes out of escrow is in chapter 501, F.S., Consumer Protection, but there is no specific state agency responsible for its enforcement. State-chartered financial institutions, including banks and credit unions, as well as mortgage lenders, are licensed and regulated by the Office of Financial Regulation (OFR or Office). Representatives of OFR state that such state-regulated financial institutions and mortgage lenders are expected to abide by the requirements of this section, and would typically do so if a complaint is received by OFR or by the Division of Consumer Services of the Department of Financial Services, (though the meaning of “loss” may be vague). But, ultimate enforcement of the statute’s requirements is a matter for the courts. However, for mortgage lenders licensed under chapter 494, F.S., the Office may levy administrative penalties and fines for the mortgage lender’s failure to disburse funds in accordance with agreements, although OFR representatives state that such penalties are unlikely unless there was a repeated practice of violations. Also, there is no comparable provision for imposing administrative penalties on state-licensed banks, savings-and-loan associations, savings banks, and credit unions, which are exempt from chapter 494, F.S.

The Federal Real Estate Settlement Procedures Act (RESPA)

Federal law addresses this issue. The Federal Real Estate Settlement Procedures Act (RESPA) imposes requirements that apply to any mortgage loan on residential property designed for one to four families and which is insured by any agency of the federal government or is made by any lender that is regulated by any agency of the federal government. The act includes a provision that if the loan requires the borrower to make payments to the servicer of the loan for deposit into an escrow account

for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due. If a borrower sends a "qualified written request" to the loan servicer concerning the servicing of the loan, the servicer must provide a written acknowledgement within 20 business days of receipt of the request. Not later than 60 business days after receiving the request, the servicer must make any appropriate corrections to the borrower's account, and must provide a written clarification regarding any dispute. A servicer that fails to comply with any provision of this section shall be liable to the borrower for any actual damages to the borrower as a result of the failure, plus reasonable costs and attorneys fees. The act authorizes additional damages as the court may allow in the case of a pattern or practice of noncompliance in an amount not to exceed \$1,000. The act further provides that any action for a violation of provision may be brought in the U.S. district court or in any other court of competent jurisdiction within 3 years of the violation.

Major Changes to Current Law

The bill adds requirements to the current law that makes a lender of money liable to the property owner for a loss that results from the failure of the lender to timely pay any insurance premium from escrowed funds. The bill provides that if the premium payment is not more than 90 days overdue, the insurer must reinstate the insurance policy, retroactive to the date of cancellation, and the lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner for reinstating the policy. If the premium payment is more than 90 days overdue or if the insurer refuses to reinstate the insurance policy, the lender must pay the difference between the cost of the previous policy and a new, comparable policy, for a period of 2 years.

C. SECTION DIRECTORY:

Section 1: Amends s. 501.137, F.S., relating to *Mortgage lenders; tax and insurance payments from escrow accounts; duties.*

Section 2: Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property owners would be afforded greater protections to either reinstate a property insurance policy that has been canceled due to nonpayment of premium by the mortgage lender or to be reimbursed for the additional cost of obtaining replacement coverage. State-regulated financial institutions and mortgage lenders would be subject to any policy reinstatement fees or additional costs for replacement coverage for 2 years. The bill may expose insurers to loss for risks covered under a policy secured by a mortgage for up to 90 days for which the premium has not yet been paid, but the premium would be required to be paid before the coverage is reinstated.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

The bill takes effect July 1, 2004, and if interpreted to apply to policies in effect on that date, it may be deemed to impair the obligations of such policies and as such, violate Art. 1, Sec. 10, Florida Constitution, which prohibits any law impairing the obligation of contracts. This could be cured by applying the bill to policies issued or renewed on or after the effective date.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill imposes requirements on property insurers in a statute that is not in the Insurance Code, which may impair or limit the authority of the Office of Insurance Regulation to enforce its provisions. It may be appropriate to amend s. 627.4133, F.S., which limits the right of property insurers to cancel or non-renew policies, to incorporate by reference the requirements of s. 501.137, F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 23, 2004, the Subcommittee on Insurance Regulation adopted an amendment by Representative Ritter to amend s. 627.4133, F.S. (*notice of cancellation, nonrenewal, or renewal premium*). The amendment requires an insurer that cancels a property insurance policy on property secured by a mortgage due to the failure of the lender to timely pay the premium when due to reinstate the policy as required in the bill.